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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/636,081

08/06/2003

Pramod K. Gupta

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05/18/2006

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EXAMINER

PARA, ANNETTE H

ART UNIT

PAPER NUMBER

1661

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/636,081

Applicant(s)

GUPTA ET AL.

Examiner

Annette H. Para

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 8, 9 remain provisionally rejected over claims 17, 18, 19, 20 and 21 of copending Application No. 10/405, 819.

### Claim Rejections - 35 USC § 102

Claims 1-18, and 20-21 remain rejected and newly added claim 22 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pullman et al. (US 5,294,549 published on March 15, 1994).

Applicant's arguments filed on February 24, 2006 have been fully considered, but they are not persuasive. Applicant argue that the Pullman et al reference does not teach or suggest the cultivation of **pre-cotyledonary** embryos in a medium comprising an absorbent composition in combination with gibberellin and/or abscisic acid but rather describes the different stages of conifer embryogenesis as induction, maintenance, singulation, development and germination.

Pullman et al. teach a method of cultivation of proembryos in a medium with a pH of 5.7 (column 13 table1) comprising 88.4 mg/L-132.6 mg/L of auxin, 69.36 mg/L- 144.5 mg/L of cytokinins in combination with 0.05- 1.0% activated charcoal (column 7, lines 24-28). As explained by the applicant on page 6, paragraph 1 of the remarks, the term 'pre-cotyledonary embryos' in the instant application and "proembryos" in Pullman et al. both refer to the state of the embryonic cells prior to the development stage. Pullman et al further teach that for Loblolly pine the osmotic level should be of at least 200 mM/kg and preferably about 240 mM/kg or even higher. Moreover Pullman et al. teach the transfer of the proembryos to a development culture medium (column 7, lines 29-31).

Further applicants argue that the pre-cotyledonary embryos of the instant application are cultivated in synchronization medium after the maintenance stage and prior to the development stage, whereas,

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Pullman et al. teaches the culture of proembryos in a maintenance medium in which no hormone absorbent is usually necessary or desirable at this time.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., after the maintenance stage and prior to the development stage) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### **Claim Rejections - 35 USC § 103**

Claim 19 remains rejected under 35 U.S.C. § 103(a) as being unpatentable over Pullman et al. (US Patent No. 5, 294, 549 1994).

Applicant's arguments filed on February 24, 2006 have been fully considered, but they are not persuasive.

Applicants argue that the examiner has failed to establish a *prima facie* case of obviousness because the cited reference fails to disclose or suggest all the claim elements of the claimed invention.

Pullman et al. teach that when the method for producing conifer somatic embryos is used to reproduce loblolly pine tree the osmotic level should be at least 200 mM/kg and preferably 240 mM/kg or even higher (column 7, lines 59-61). Moreover, Pullman et al. teach that these adjustments are considered to be within the routine experimental capability of those skilled in the art of tissue culture (column 13, lines 3-10). These teachings suggest all the claim elements of the claimed invention.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date

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of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### **Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette H Para whose telephone number is (571) 272-0982. The examiner can normally be reached Monday through Thursday from 5:30 a.m. to 4:00 p.m.

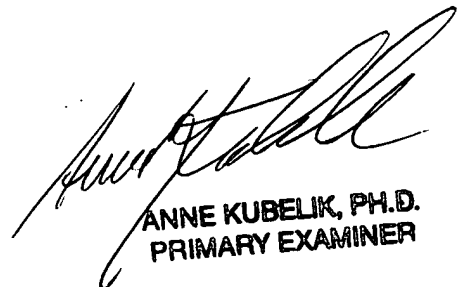
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached on (571) 272-0975. The fax number for the organization where the application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about PAIR system, see <http://pair-direct.uspto.gov> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Annette H Para

5/10/2006



ANNE KUBELIK, PH.D.  
PRIMARY EXAMINER